

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT/PERMITTING ALASKA COASTAL MANAGEMENT PROGRAM

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September 1, 2004

Ms. Guyla McGrady
Department of Natural Resources
Division of Mining, Land and Water
550 W. 7th Ave., Suite 900C
Anchorage, AK 99501-3577

Dear Ms. McGrady:

**Subject: Ketchikan Gateway Borough Area Aquatic Farm Site Disposal
State I.D. No. AK 0307-17J
Final ACMP Consistency Determination**

The Office of Project Management and Permitting (OPMP) has completed coordinating the State's review of this proposed HB 208 mariculture project for consistency with the ACMP and developed the enclosed consistency determination.

Based on an evaluation of your project by the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources, OPMP concurs with your certification that the project is consistent with the ACMP and affected coastal district's enforceable policies. This will be the final ACMP decision for your project.

By copy of this letter, I am informing the U.S. Army Corps of Engineers and State review participants of ACMP/OPMP's finding. If you have any questions, please contact me at joe_donohue@dnr.state.ak.us or by phone at 907-465-4664. The State appreciates your cooperation with the ACMP.

Sincerely,

Joe Donohue
ACMP Project Specialist

Enclosure

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Distribution List

cc: Mike Ostasz – ADEC, Anchorage *
David Petree – ADFG/ Mariculture, Juneau *
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**ALASKA COASTAL MANAGEMENT PROGRAM
PROPOSED CONSISTENCY DETERMINATION
CONCURRENCE**

DATE ISSUED: September 1, 2004

PROJECT TITLE: Ketchikan Gateway Borough Area Aquatic Farmsite Disposal

STATE ID No.: AK 0307-17J

AFFECTED COASTAL RESOURCE DISTRICT: Ketchikan Gateway Borough

DESCRIPTION OF PROJECT SUBJECT TO ACMP REVIEW:

Summary: The project subject to this consistency review is the use of tideland and submerged land for aquatic farming utilizing suspended culture. The nomination area is divided into 6 sites and consists of the following uses of tide and submerged land, as further described in the DNR Preliminary Finding and Decision for Proposed Aquatic Farmsite Leases Located within the Ketchikan Gateway Borough.

General Location Reference: The project subject to this consistency review is the disposal of sites for suspended culture or subtidal culture in six locations in the area of Ketchikan Gateway Borough.

For the land disposal program sites being proposed by DNR, the scope of this review covers the typical operations and state authorizations for the sites discussed below.

KET-N067 Cone Pt to Pt Alava - Subtidal culture
Township 77S Range 94E Section 9, 10, 13, 14, 15 CRM
Township 77S Range 95E Section 18 CRM

A maximum use of 30 acres of tide and submerged land from Cone Pt to Pt Alava is proposed for subtidal aquatic farm lease sites; the number of sites will not exceed three. Currently, two sites have been nominated within this location, which follows the coastline from Cone Point to North point Alava, southeast of Lucky and approximately 17 air miles southeast of Ketchikan.

KET-N068 Northwest Boca de Quadra – Subtidal culture
Township 77S Range 95E Section 22, 27, 34 CRM
Township 78S Range 95E Section 3, 10, 11, 13, 14, 24 CRM
Township 78S Range 96E Section 19 CRM

A maximum use of 50 acres of tide and submerged land from the shoreline east of Slate Island and going north is proposed for subtidal culture. The number of farm sites will not exceed four in this area that runs for approximately 8 miles along the coastline. The area lies within Misty Fiords National Monument, and is approximately 30 air miles southeast of Ketchikan.

KET-N069 Lower Behm Canal – Subtidal culture

Township 76S Range 94E Section 19, 24, 25, 26, 27, 34 CRM

A maximum use of 20 acres of tide and submerged land north of Alava Bay to Fox Point is proposed for two subtidal aquatic farm lease sites. The maximum number of sites at this location, which runs for approximately one mile along the coastline, will not exceed two. Currently, one farm site is proposed for this location, which lies within Misty Fiords National Monument and is approximately 22 air miles southeast of Ketchikan.

KET-N003-N006 Carroll Inlet – Suspended culture

Township 74S Range 93E Section 17, 20, 29 CRM

A maximum use of 40 acres of tide and submerged land within Carroll Inlet is proposed for suspended culture. The number of farm sites will not exceed four in this area between a small, unnamed island north of Osten Island to the western side of Island Point. Carroll Inlet is located approximately 16 miles northwest of Ketchikan.

KET-N042-046 Traitor's Cove – Suspended culture

Township 71S Range 90E Section 8, 9, 10, 11, 12, 17 CRM

A maximum use of 50 acres of tide and submerged land north of Ketchikan in Traitor's Cove is proposed for suspended culture. The number of lease sites will not exceed five. Traitor's Cove is off the east side of Behm Canal, approximately 25 miles north of Ketchikan. *On September 17, 2003, the Department of Natural Resources notified OPMP that the proposed acreage for mariculture at this site will be reduced but that the number of sites will remain the same.*

KET-N001-002 Sykes Cove – Intertidal culture

Township 77S Range 95E Section 15, 22 CRM

A maximum use of 19 acres of tide and submerged land in and near Sykes Cove is proposed for intertidal aquatic farm sites. Nine acres is being proposed for Sykes Cove to the north of Point Sykes and ten acres is being proposed for the cove to the south of Point Sykes. The maximum number of lease sites will not exceed two in this location that lies within Misty Fiords National Monument at the southern entrance of Behm Canal, approximately 38 air miles southeast of Ketchikan.

All Sites

Potential farm sites covered by this review are defined by, and must meet, operational standards considered by the agencies to be "typical." The scope of the activities covered by this ACMP review includes the sites themselves and the "typical" standards for suspended culture and intertidal clam operations as identified in the DNR Preliminary Finding and Decision. In summary, those typical standards include:

- Generally start utilizing up to one acre of tide and submerged land.
- Suspended culture generally uses lantern nets, bags, trays or cages suspended from surface longlines or log rafts that are anchored at each end; contain all gear within the acreage requested; farm area delineated with clearly marked buoys.

- Typically, aquatic farm sites in Alaska utilizing suspended gear are on the average three acres in size with a 50' X 50' hardening area on the beach. Additionally, aquatic farmers typically build a work raft, which is anchored within the growing area.
- Alaska farmers generally use suspended culture techniques where single oysters are grown in nets or trays hung from floating loglines in waters 30-120 feet deep. This does not preclude the lessee to use a new or innovative culture technique as long as it is a suspended culture technique for the purpose of farming oysters, clams or scallops. In addition to the farm site area aquatic farmers generally utilize an area of approximately 50' x 50' in the inter-tidal area to hold animals out of the water where they are exposed to air for at least part of the day, a few weeks to a few months. This process will remove most of the fouling and harden the shell to extend the shelf life of the oyster. It can be expected that at a minimum shellfish will require a period of holding out of the water while awaiting results of PSP tests. Any holding area in the inter-tidal zone outside of the farm site boundary will be allowed only upon approval by the Department's of Natural Resources, Fish and Game and Environmental Conservation.
- The average size of subtidal, on-bottom lease sites in Alaska, the average size is six acres.
- Plots for clam culture generally require substrate enhancement (removal of large rocks), measures to minimize storm and wave damage, and predator control. Seeded on the beach, clams burrow into the substrate. Clams may or may not need to be seeded depending on wild stock density. Geoducks may be planted in PVC tubes at a distance of up to one tube per square foot, or they may be placed directly into the substrate.

For the land disposal program sites being proposed by DNR, the scope of this review covers the state authorizations for the sites identified below and the typical operations discussed above.

ACTIVITIES NOT IN THE SCOPE OF REVIEW:

The activities also require authorization by the U.S. Corps of Engineers. However, because individual applicants do not exist for the actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, this review information does not include applications for a COE permit. Individual applicants may be able to fulfill COE requirements by obtaining a general permit (GP) #91-7N (Aquatic Farm Structures) and a Nationwide Permit #4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities)] from the U.S. Corps of Engineers. These permits were previously found consistent with the ACMP and would not require subsequent ACMP review. If an individual permit is required by the COE, and more than minor changes are made to the activities addressed by this determination, additional review for consistency with the ACMP may be required.

Activities may also require authorization from the U.S. Forest Service for any associated upland use within national forests. However, because individual applicants do not exist for the actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, USFS permit applications are not included at this time. Individual applicants will be required to apply for all necessary authorizations. If an individual permit is required by the USFS, and more than minor changes

are made as a result of that review, additional review for consistency with the ACMP may be required.

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

AUTHORIZATIONS:

The project must be found consistent with the ACMP before the following State authorizations may be issued:

Alaska Department of Fish and Game (DFG)
Aquatic Farm and Hatchery Operation Permit
Special Area Permit

Alaska Department of Natural Resources (DNR)
Aquatic Farmsite Lease

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

Department of Environmental Conservation authorizations will be necessary at later stages of the authorized activities. These permits are not subject to ACMP review.

The activities also require authorization by the U.S. Corps of Engineers (COE) and possibly the U.S. Forest Service. See **ACTIVITIES NOT IN THE SCOPE OF REVIEW**, above, for more information.

The DNR Aquatic Farmsite Leases will be issued with an effective date of 2/2/04. State agencies shall issue other permits within five days after ACMP/OPMP issues the final consistency determination that concurs with the proposed project, unless the resource agencies consider additional time necessary to fulfill their statutory or regulatory authority.

CONSISTENCY DETERMINATION:

Based on an evaluation of the proposed project by the Alaska Departments of Environmental Conservation, Fish and Game and Natural Resources, and the affected coastal district, the State of Alaska concurs with the consistency certification submitted by the Alaska Department of Natural Resources.

GENERAL ADVISORIES:

Please note that, in addition to their consistency review, agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their

statutes and regulations in addition to being consistent with the coastal program. An agency permit or authorization may be denied even though the State concurs with the ACMP.

As a result, authorities outside the ACMP may result in additional permit/lease conditions. Participating agencies have advised OPMP conditions may be included in their authorizations solely under their own authority that are not needed for consistency with the ACMP.

If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

ADF&G Operating Permit:

ADF&G has advised OPMP that the following stipulation will be incorporated into the Operating Permit. These stipulations are being carried solely under their own authority and are not needed for consistency.

- The applicant shall discuss predator exclusion plans with the Mariculture coordinator before the Operation Permit will be issued. The farmer shall monitor any exclusion devices for entanglement of fish and wildlife and shall report all incidences to the Mariculture Coordinator. If, upon inspection, ADF&G finds the exclusion devices have been unattended and are in disrepair, the farmer will be issued a warning and the Mariculture Coordinator will discuss with the farmer a strategy for successful maintenance of the exclusion devices. If, upon a second inspection, ADF&G finds the exclusion devices unattended or in disrepair, the farmer will be cited and fined (AS 16.40.170 class B misdemeanor) and will no longer be allowed the use of exclusion devices at the farmsite.

ADNR Aquatic Farm Lease:

Archaeological Sites: The ACMP Historic, Prehistoric, and Archaeological Resources Standard (6AAC 80.150) requires state agencies and coastal districts to identify areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory. However, the ACMP relies on other governmental programs to protect the identified resources. Comments and recommendations on these sites were received from the State Historic Preservation Officer as follows:

KET-N067, N068, N069: High potential for cultural resources conflicts; should be surveyed.

KET-N003-006: Do not lease. Too many sites nearby. There is a large historic camp and prehistoric fishtrap/camp within the lease area.

The DMLW has advised OPMP the Aquatic Farm Leases will carry a stipulation stating "if cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology (907)

269-8721) shall be contacted immediately. The OPMP recommends that the above DNR/DMLW Aquatic Farm Lease stipulation require that the U.S. Army Corps of Engineers (907-753-2712) also be contacted so that consultation per Section 106 of the National Historic Preservation Act may proceed. By copy of this letter, the OPMP is advising the U.S. Army Corp of Engineers of DNR/SHPO's recommendation.

Ketchikan Coastal District Comments:

The Coastal District commented that *the selected sites do not appear to conflict with other uses or activities.*

The KGB Coastal District made additional comments about the consistency of the HB 208 program with the District's enforceable policies and those comments will be discussed in the Consistency Evaluation included with the final consistency response.

U.S. Forest Service Advisories:

All of the proposed aquatic farms create some visual impact on the (Misty Fiords National) monument...The overall appearance of the Misty Fiords National Monument Wilderness is of great importance to the public that uses the monument. The Ketchikan-Misty Fiords Ranger District has serious concerns about the visual impacts the farms will have on the monument. The predator netting and work rafts represent the greatest threat to the visual aesthetics of the monument. The work rafts also create the risk that items that conflict with this primitive natural environment will be present in numerous locations along the coastline. To avoid detracting from the primitive natural environment, we recommend that predator netting not be used within the monument. We also recommend that work rafts not be authorized within the monument. Any netting or works rafts that are allowed within the monument should be made of natural-appearing materials and installed and managed in such a way as to minimize any visual impacts on the neighboring uplands.

If predator netting is allowed at an inter-tidal farm site, several steps should be taken to minimize the risk to animals. The mesh should be of a size that would prevent a small animal's foot from passing through it and becoming snared. The edges of the netting should be secured in a way that would prevent these animals from getting under the netting. The netting should be inspected regularly to ensure that it has not been torn after raking across barnacles and other sharp objects on the beach as the tide goes in and out.

U.S. Forest Service Site-specific Comments:

The Ketchikan-Misty Fiords Ranger District commented about KET-N042-046 (*Traitors Cove*) that *navigation in this area can be challenging, but the cove does provide access to the National Forest System lands. We would ask that any aquatic farming in the cove be conducted in a manner that would not inhibit the main channels of navigation in this cove.*

Public Comments:

Comments were received from four members of the public regarding KET-N042-046, Traitors Cove. The commenters were concerned that the area is a heavily used recreational area for

hunting, crabbing, shrimping, fishing, sightseeing and boat moorage. Navigation within the cove was also a concern. ADNDR intends to reduce the acreage available for mariculture within the cove; however, the number of sites will remain the same.

One public comment was received for KET-N068, Boca de Quadra, concerning the potential loss of safe anchorage and access to the waters for recreation.

In permitting an aquatic farm, the Alaska Departments of Fish & Game and Natural Resources require consistency with the Alaska Coastal Management Program and concurrence with the Public Trust Doctrine. ADNDR addresses some public access concerns with stipulations that reserve a public access easement to protect the public's rights under the Public Trust Doctrine of ingress and egress to the public domain and their right to use public lands for navigation, commerce, fishing, and other public trust purposes. ADG&G requires these stipulations to ensure access and to maintain the state's sport, personal use, subsistence and commercial fisheries.

General Requirements:

Non-inclusive: This consistency determination may include reference to specific laws and regulations, but this in no way precludes an applicant's responsibility to comply with all other applicable State and federal laws and regulations.

Project Changes: This consistency determination is only for the project as described. If, after issuance of a final consistency determination or response, the applicant proposes any changes to the approved project, including its intended use or required authorizations, prior to or during its siting, construction, or operation, the applicant must contact this office immediately to determine if further review and approval of the modifications to the project is necessary. Changes may require amendments to the State authorizations listed in this determination or response, or may require additional authorizations.

Appeal: When the final consistency determination is issued, it is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the Superior Court must be made within 30 days of the date of this determination.

FINAL CONSISTENCY DETERMINATION PREPARED BY:

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